

## Remarks

The present response is filed with a Request for Continued Examination (RCE), and is to the Office Action mailed in the above-referenced case upon Sept. 24, 2003, made Final. Claims 1-4, 17-19, 21 and 22 are presented below for examination. The Examiner has maintained the rejections of claims 18-19 and 22 under 35 U.S.C. 102(e) as being anticipated by Tognazinni, the rejection of claims 1-4 and 17 under 35 U.S.C. 103(a) as being unpatentable over Tognazinni, and the rejection of claim 21 under 35 U.S.C. 103(a) as being unpatentable over Tognazinni in view of Ichinose, as set forth in the previous Office Action.

Applicant has again carefully studied the prior art cited and applied by the Examiner, and the Examiner's statements and rejections of the instant Office Action. In response, applicant herein provides further argument to more particularly point out the patentable subject matter of applicant's invention, and to clearly and unarguably establish that the claims in their present form distinguish over the prior art references, either singly or combined. Applicant points out and argues the key limitations of applicant's claims, which still appear to be misunderstood by the Examiner in his rejections and statements. Applicant has also herein slightly amended independent claim 1 only so as to agree in language with claim 18, reciting inserting the first and second flags in real time during the media presentation.

In applicant's previous response filed February 27, 2003, applicant amended independent claim 1 and 18 to specifically recite inserting into the recorded media at any point, a first flag marking the beginning of, and a second flag marking the end of the identified media portion, and provided

substantial argument that the claims as amended clearly distinguish over the prior art, because Tognazinni does not allow the user to insert into the media portion, in real time during the media presentation, a first and second flag as specifically recited in the claim as amended.

In the Examiner's response provided in the instant Office Action the Examiner disagrees, arguing that the reference of Tognazinni discloses that "Thread D implements a reset function which allows a start-of-program pointer to be set at an arbitrary point in time even when not recording. In support of the argument the Examiner has relied on an alternative embodiment example of the invention of Tognazinni, using a portable video camera containing the invention, quoting from the specification that, for example, when one's child goes up to bat at a baseball game, one might wish to set a start-of-program pointer in the event that something worthy of recording occurs, adding that it is clear that Tognazinni discloses the newly added limitations of applicant's previous Office Action response, allowing the user to arbitrarily insert into the media portion, in real-time during the media presentation a first and second flag as recited in applicant's claims.

Firstly, applicant must respectfully point out to the Examiner that applicant's claims do not recite, and applicant's invention does not specifically teach arbitrarily inserting the flags into the media portion; rather, applicant's invention teaches identification of the media portion, and setting up the first and second flags at a real and determined point in time i.e., at the point of when the presentation event worthy of playing back and/or saving is actually taking place, in a non-arbitrary fashion.

Applicant's invention specifically teaches placing the first flag marking the beginning of the identified media portion, in response to the media being presented and recorded via the continuous-loop recording process, while the presentation is being heard or viewed, or both, by the user.

The first flag is inserted at the point at which the portion of media presentation desired for identification for playback or storage is perceived by the user. Applicant's invention monitors a real-time streaming audio or audio-visual presentation and the user takes the queue to identify the portion of media presentation worthy of recording and saving from the continuous-loop recording, from the presentation itself, while it is being presented. To paraphrase, applicant's invention teaches inserting the flags into the recording, based upon what is perceived in the real-time presentation being played.

Applicant strongly asserts that the clear distinction between the claimed invention and that of Tognazinni, is that, in the example of Fig. 8 of Tognazinni disclosing the use of a portable video capturing device containing his invention, which is the portion relied upon by the Examiner in support of the Examiner's position, Tognazinni teaches placing the start-of-program pointer, in response to the possibility of an event occurring which may be worthy of recording, not in response to the actual desired portion of the event itself deemed worthy for playback or saving, as taught in applicant's invention. Moreover, in the relied-upon portion the Examiner should not ignore the language in the reference that this arbitrary pointer may be set even though no recording is taking place, which clearly is in conflict with the limitations of the claim.

Applicant believes this to be a clear and obvious distinction between the invention of Tognazinni and applicant's claimed invention, worthy of patentable weight. Regarding claim 18, applicant argues that the specific teaching of Tognazinni relied upon by the Examiner cannot read on applicant's claimed limitations in step (b) of the claim, because Tognazinni teaches inserting the start-of-program pointer, even if recording is not taking place, therefore, there can be no identification of a specific media portion

within the specific time period of the continuous-loop recording, by inserting into the media portion at any point, in real-time during the media presentation the first and second flags, if there is no recording taking place.

Applicant's invention specifically teaches recording a specific portion of a media presentation in continuous-loop fashion, during presentation of the media, such that the user may insert the beginning flag in response to a specific event of the presentation as it begins, in real-time, not in anticipation of the possibility of an event happening worthy of recording, as per the teachings of Tognazinni.

Applicant therefore strongly asserts that claims 1 and 18 are clearly and unarguably patentable over the teachings of Tognazinni, as the reference fails to disclose or suggest all of the limitations as specifically recited in applicant's claims. The Examiner's 102(e) and 103(a) rejections of applicant's claims 1 and 18 as anticipated by, or unpatentable over Tognazinni are therefore rendered moot.

Applicant's dependent claim 21 is rejected as being unpatentable over Tognazinni in view of Ichinose, as set forth in the previous Office Action. In view of applicant's above substantial argument presented on behalf of claims 1 and 18, Tognazinni clearly fails as a primary reference for combining with Ichinose to read on applicant's claim. Claim 21, as well as depending claims 2-4, 17, 19 and 21-22, are all therefore patentable on their own merits, or at least as depended from a patentable claim.

As all of the claims as amended and argued above have been clearly shown to be patentable over the prior art presented by the Examiner, applicant respectfully requests that the rejections be withdrawn, and that the case be passed quickly to issue. If any fees are due beyond fees paid with this amendment, authorization is made to deduct those fees from deposit

account 50-0534. If any time extension is needed beyond any extension requested with this amendment, such extension is hereby requested.

Respectfully submitted,

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